IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.160 OF 2002

The Commissioner of Income-tax,
Mumbai City-II, Mumbai .. Appellant.

V/s.

M/s.Mihir Chemical Industries
Pvt.Ltd., Mumbai .. Respondent.

Mr.K.R. Chaudhary with Ms.S.V. Bharucha i/b. H.D. Rathod for the appellant.
Mr.A.K. Jasani for the respondent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 11TH AUGUST, 2004.

P.C. :

. Heard Mr.K.R. Chaudhary, the learned counsel for the revenue and Mr.A.K. Jasani, the learned counsel for the respnodent-assessee.

2. In the memorandum of appeal two substantial questions of law have been framed. The said questions are thus.

> "(a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, was justified in deleting the addition of Rs.9,79,743/- made by the

> Assessing Officer in respect of differential value of closing stock on account of availment of MODVAT credit by the assessee, following the judgment of this Hon'ble Court in the case of Indo Nippon Chemicals (245 ITR 384) ?
>
> (b) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the disallowance of Rs.40,000/- in respect of the assessee's claim u/s.32 AB ignoring the fact that the machinery in question was purchased in the earlier previous year ?"

3. Insofar as Question (a) is concerned, the learned counsel for the revenue fairly conceded that in view of the judgment of the Supreme Court in the case of Commissioner of Income Tax V/s. Indo Nippon Chemical Co. Ltd. (261 ITR 275), the view of the Tribunal cannot be faulted.

4. As regards question (b), we find that the Tribunal considered this aspect thus :

> "6. The third ground is that the CIT (A) erred in deleting the disallowance of Rs.40,000/- being the assessee's claim u/s.32 AB of the Act. The assessee paid a sum of Rs.40,000/- during the relevant accounting year in respect of certain eligible machinery purchased in the earlier year. It claimed deduction of this amount u/s.32 AB. The A.O. was of the view that the amount of Rs.40,000/- cannot be said to have been utilised during the relevant previous year for the purpose of the machinery. He therefore disallowed the assessee's claim.

7. On appeal, the CIT(A) noted that the machinery had been undisputedly purchased in the earlier year and the payment of Rs.40,000/- has been made during the relevant accounting year and that on a perusal of section 32 AB, it was clear that the important requirement is that the amount should have been utilised during the relevant accounting year. Since the amount was nothing but the payment made for the purchase of the machinery, he was of the view that it was utilised for the purchase of the machine. In this view of the matter, he allowed the assessee's claim.

8. The Revenue is in appeal to contend that the deduction can be allowed only if the machinery is purchased during the relevant previous year. We do not find any warrant for this interpretation of the section. According to section 32 AB(1)(b), the assessee should have utilised the amount during the previous year for the purchase of any new machinery or plant. It is nobody's case that the amount of Rs.40,000/- is for anything other than the machinery purchased during the earlier year. There is no requirement express or implied in the provision to the effect that the deduction will be allowed only if the machinery is purchased during the relevant accounting year. What is required is that the assessee should have utilised the amount in respect of which deduction is claimed during the relevant previous year for the purchase of the machinery. The purchase of the machinery could be in any year and so long as the amount is referrable to the purchase, the deduction cannot be denied. In our opinion, the amount of Rs.40,000/- paid by the assessee during the relevant previous year is "for the purchase" of the machinery made in the earlier year. In this view of the matter, we uphold the decision of the CIT(A) and dismiss the ground."

5. The consideration of the matter by the Tribunal does not suffer from any error of law with regard to question (b).

6. No substantial question of law arises in this appeal.

7. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)